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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/716,567	11/20/2000	Bassem M. Demian	176746-2	7505

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EXAMINER

FUQUA, SHAWNTINA T

ART UNIT

PAPER NUMBER

3742

DATE MAILED: 01/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicant(s)

09/716,567

Applicant(s)

DEMIAN, BASSEM M.

Examiner

Shawntina T. Fuqua

Art Unit

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 1-11 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 4.
2. Applicant's election without traverse of Invention II, claims 12-22 in Paper No. 4 is acknowledged.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 22 is rejected under 35 U.S.C. 102(e) as being anticipated by Hurtado (US6341237).

Hurtado discloses a method of correcting an imbalance condition in a limb wherein the limb is controlled by first and second counteracting muscles wherein the first muscle is stronger than the second muscle and comprising the step of applying an electrical signal to the second muscle to strengthen the second muscle to counter balance the strength of the first muscle to correct the imbalance between the two muscles and cause the limb to assume the normal position (column 4, lines 29-47), and a strap (20) wherein at least one electrode is attached to the strap

Art Unit: 3742

with the electrode abutting the muscle (column 9, lines 14-21, 24-26; Figures 1-2) and then applying an electrical pulse signal to the electrode (column 9, lines 59-67).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurtado in view of Axelgaard et al (US4326534).

Hurtado discloses all of the recited subject matter except a method of correcting a bunion condition in a foot by applying the electrical signal to the abductor hallucis muscle, applying repetitive cycles of electrical pulses, generating pulses at a rate of 2Hz to 150Hz and a pulse width of about 60 to 250 microseconds, increasing the pulse width, optimizing the signal to maximize correction by adjusting the signal parameters until an optimum signal is generated, applying the signal in the range of 15-30 minutes, tightening and relaxing the muscle in the repetitive periods. While Hurtado does not explicitly disclose a method of correcting a bunion condition by applying an electrical signal to the abductor hallucis muscle, it would have been obvious to one of ordinary skill to have applied the method and strap to a limb such as a foot. Axelgaard et al discloses applying repetitive cycles of electrical pulses (abstract, column 7, lines 56-67), generating pulses at a rate of 2Hz to 150Hz (column 8, lines 8-10) and a pulse width of about 60 to 250 microseconds (column 10, lines 63-68), increasing the pulse width (column 7, lines 64-66), optimizing the signal to maximize correction by adjusting the signal parameters

Art Unit: 3742

until an optimum signal is generated 9column 7, line 56-column 8, line2), applying the signal in the range of 15-30 minutes (column 14, line 66), tightening and relaxing the muscle in the repetitive periods (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included the repetitive electrical pulses with varying pulse rate and width of Axelgaard in the method of Hurtado because, repetitive electrical pulses with varying pulse rate and width minimizes the undesirable effect of muscle fatigue during treatment.

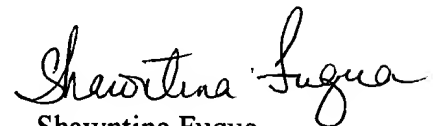
*Conclusion*

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawntina T. Fuqua whose telephone number is (703) 305-2581. The examiner can normally be reached on Monday-Friday 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa Walberg can be reached on (703) 308-1327. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3463 for regular communications and (703) 305-3463 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

stf  
December 13, 2002



Shawntina Fuqua  
Patent Examiner

Art Unit 3742